

## **DRAFT PROPOSAL OF A SIDEWALK CAFÉ ORDINANCE FOR THE CITY OF LOCK HAVEN**

### **Section 1. Title.**

This article shall be known and may be referred to as the "Sidewalk Cafe Ordinance."

### **Section 2. Intent and purpose.**

The intent of this article shall be to permit sidewalk cafes to operate on public street rights-of-way and other designated public places within the City of Lock Haven and to set requirements of this article except as otherwise provided elsewhere in the Code of the City of Lock Haven. The Code Officer may impose additional requirements to protect against health, safety or welfare hazards related to sidewalk cafe operation and may modify requirements for physical facilities when health, safety or welfare concerns may arise.

### **Section 3. Definitions.**

For the purposes of this article, certain words and phrases shall have the meanings ascribed to them by this section, unless the context clearly indicates a different meaning.

**ABUTTING PROPERTY:** Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

**CITY ENGINEER:** The City Engineer or his/her authorized representative.

**CODE OFFICER:** The Code Enforcement Officer of the City of Lock Haven or his/her authorized representative.

**OWNER:** Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

**PEDESTRIAN WALKWAY:** That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

**PERSON:** Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

**RESTAURANT:** A food service establishment where food is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment.

**SIDEWALK AREA:** That portion of the City street right-of-way reserved for sidewalks.

**SIDEWALK CAFÉ:** An outdoor dining area operated by a restaurant located on a sidewalk area or other designated public place and containing removable tables, chairs, and related appurtenances, which is not located on or does not encroach upon the pedestrian walkway as established under the provisions of this article. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy.

STREET RIGHT-OF-WAY: The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas.

#### Section 4. License required.

- A. It shall be unlawful to sell, offer for sale, vend, operate, maintain, serve or give away any item from a sidewalk cafe without a valid license, issued by the City Code Officer.
- B. Application for a sidewalk cafe must be made in writing to the City Code Office.
- C. Licenses for sidewalk cafes shall only be available under the terms of this article. The Code Officer shall have no authority to grant licenses for sidewalk cafes for any reason except as prescribed and approved hereunder.
- D. All sidewalk cafes and attendant facilities shall be inspected by the Code Officer, the City Engineer and shall meet any requirements of the PA Department of Agriculture Bureau of Food Safety prior to the issuance of a sidewalk cafe license.
- E. It shall be permissible for sidewalk cafes to operate within the following designated areas:
  - (1) Sidewalk areas encompassed within the boundaries of the Central Business Zoning District.
  - (2) Such other public places as may be designated by resolution of City Council.
- F. Sidewalk cafes shall be licensed only when such are operated and serviced by a restaurant where all food preparation, sanitation and related services for the sidewalk cafe shall be performed.
- G. Acceptance of a sidewalk cafe license is an express acknowledgment and consent to the terms and restrictions set by this article and the Code Officer. The grant and usage of such license is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.
- H. As an express condition of the acceptance of a license hereunder, the recipient agrees to police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.

#### Section 5. Application fees.

- A. The license fee for a sidewalk cafe shall be based on the customer seating capacity, and such license shall be valid to the end of the calendar year in which the license was issued.
  - (1) License application fee (includes first calendar year of operation) and annual license renewal fee shall be set, from time to time, by resolution by Council.
- B. There shall be no prorating or rebating of license fees.

#### Section 6. Application requirements.

Each applicant for a license under this article shall submit three copies of his application and plans for a sidewalk cafe to the Code Officer, who shall issue a license upon compliance with the terms and conditions of this article. Applications for sidewalk cafe licenses shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the sidewalk cafe, of the owner of the underlying freehold and/or property owner abutting the café if not the same person and:
  - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
  - (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.
- E. The name under which the sidewalk cafe will be operated.
- F. The street address and the City food establishment license number of the restaurant operating and servicing the sidewalk cafe.
- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
  - (1) The entirety of the sidewalk abutting the property of the owner;
  - (2) The frontage of the property proposed for the sidewalk cafe;
  - (3) All abutting properties;
  - (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
  - (5) Any bus stops within 25 feet on either side of the proposed sidewalk cafe area; and
  - (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk cafe site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk cafe.
- H. The seating capacity of the proposed sidewalk cafe.
- I. A copy or copies of the certificate or certificates of insurance required to be provided.

- J. If the serving of alcoholic beverages is proposed, proof that the applicant has a state liquor license that will allow or can be amended to allow applicant to serve alcoholic beverages in the sidewalk cafe.

#### Section 7. Design standards.

All sidewalk cafes shall comply with the following standards:

- A. A sidewalk cafe shall have a pedestrian walkway with a clear unobstructed width of four feet between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, bus shelter, etc.), and cafes shall not eliminate a minimum 60-inch by 60-inch passing space for all lengths of sidewalk greater than 200 feet in length. The pedestrian walkway shall be provided with an unobstructed height of seven feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).
- B. No sidewalk cafe may be permanently located within the sidewalk area by means of raised deck platform, fence, walls or other structures or enclosed by fixed walls, except that sidewalk cafe boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers must be easily removed and three feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the identified pedestrian walkway, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure other than the building associated with the application.
- C. No sidewalk cafe shall be situated:
- (1) Within six feet of any pedestrian crossing as defined in City of Lock Haven Code
  - (2) Within five feet along the street line of any fire hydrant or other emergency facility;
  - (3) Within five feet of any driveway;
  - (4) Within four feet of any curbline;
  - (5) Within 10 feet to the rear of any sign marking a designated bus stop;
  - (6) In a manner which restricts sight easements of vehicular traffic; or
  - (7) In a manner which obstructs traffic control devices or traffic signs.
- E. All sidewalk cafes shall be open to the air.
- F. Canopies and awnings may be permitted in accordance with specifications, as delineated by the City Building Code and Zoning Code, which relate to height, placement, interference with pedestrian passage and traffic sight easements.
- G. Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- H. All sidewalk cafes and their attendant facilities or improvements shall comply with clearances required for structures in relation to utility lines as provided in the City Building Code.
- I. No sidewalk cafe shall be located on the sidewalk between the building facade and a bus stop.

- J. No portion of a sidewalk cafe or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian walkway as defined in this article.
- K. Sidewalk cafes shall provide and maintain adequate lighting in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- L. Sidewalk cafes shall not obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or street.
- M. No signs shall be hung or attached to any portion of the sidewalk cafe, except those signs that are in compliance with provisions of the City Zoning Ordinance.

#### Section 8. Sidewalk cafe regulations.

A sidewalk cafe authorized and operated pursuant to this article shall:

- A. Comply with all plans submitted to and approved by the Code Officer under Section 4.
- B. Serve alcoholic beverages only in conformance with Pennsylvania Liquor Control Board requirements.
- C. Operate only during the same hours of business as the sponsoring restaurant. All patrons must be vacated from the sidewalk cafe and all utensils, containers or any other serving materials used in the operation of the sidewalk cafe or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe area within one hour of closing; provided, however, that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe may be allowed to remain on the sidewalk area if specifically permitted in the Code Officer's approval of the sidewalk cafe plans under Section 4 above.
- D. Remove all sidewalk cafe structures by November 15, and not install prior to April 1, in any year for which a license is granted.
  - (1) In the event that favorable weather conditions should prevail, a sidewalk cafe may temporarily reopen on a daily basis during the time period set forth in Subsection D above. All tables, chairs and other materials must be removed every day by the business' end of the business day.
- E. Use no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk cafe.
- F. Serve no food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
- G. Music in the sidewalk café, from whatever source, and all noise shall be subject to City ordinance including, but not limited to, Zoning and Nuisance.
- H. Police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.
- I. Only break resistant dinnerware and glassware and serving containers may be used in the sidewalk café area

- J. Comply with all other provisions of the codified ordinances of the City of Lock Haven, Clinton County, Pennsylvania.

Section 9. Review of application.

- A. Before any license is issued pursuant to this article, the plans submitted to the Code Officer pursuant to this article shall be referred to and approved by the City Engineer, Chief of Police and Fire Code Official.
- B. The Code Officer shall determine if the applicant has:
- (1) Obtained the approval of the City Engineer and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
  - (2) Obtained the approval of the Historic District Advisory Committee (HDAC) if the sidewalk cafe is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HDAC in the Code of the City of Lock Haven. The HDAC shall use the review criteria for such plans relating to a sidewalk cafe's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk cafe approved by the HDAC requires reapproval from the HDAC. Once approval is granted by the HDAC, the approved plans are valid and do not require annual reapproval.
  - (3) Complied with all rules, regulations and specifications of this article.
- C. The Code Officer may impose any other restriction on the location, size or design of the sidewalk cafe that, in his/her sole judgment, protects the health, safety and welfare of the public.

10. Conditions for issuance of license.

- A. Upon approval by the Code Officer of the plans submitted by the applicant and upon the applicant furnishing to the City of Lock Haven the following, the Code Officer shall issue a license, valid through the end of the calendar year:
- (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
  - (2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
  - (3) If applicable, proof that the applicant has a state liquor license authorizing him/her to serve alcoholic beverages in his/her sidewalk cafe.

- B. Sidewalk cafe licenses are not transferable. Changes in ownership/operation require reapplication for a license.

#### 11. Removal of improvements.

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk cafe for the following reasons: the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the outdoor season, the City shall remove all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service or expense incurred by the City to correct such violation, plus the administrative fee.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be paid by the property owner. Upon failure of the property owner to pay the amounts due the City, the City shall be entitled to collect all amounts and pursue any or all of the remedies identified prescribed by law.

#### 12. License renewal.

A sidewalk cafe license may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Code Office, Police Department, Fire Department or Commonwealth of Pennsylvania Department of Agriculture Bureau of Food Safety. Each agency shall provide to the Code Officer copies of any inspection results, complaints filed and citations issued concerning the sidewalk cafe under consideration. The renewal fee for a license shall be, from time to time, by resolution by Council.

#### 13. Written notice of violations; suspension of license.

Upon finding by the Code Officer that an applicant has violated any provisions of this article, the Code Officer shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Code Officer may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Code Officer may suspend the applicant's license issued pursuant to this article. The Code Officer shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before the City Manager shall be accorded if requested.

#### 14. Sale and consumption of alcoholic beverages.

The area encompassed within a sidewalk cafe authorized pursuant to this article, if duly licensed for sale and consumption of alcoholic beverages by the Pennsylvania Liquor Control Board, shall not be subject to Open Containers prohibitions of the Code of the City of Lock Haven for alcohol that remains within the approved and licensed area.

#### 15. Repealer; applicability of other legislation.

- A. All ordinances or parts of ordinances conflicting with the provisions of this article are hereby repealed.

#### 16. Violations and penalties; effect on eligibility for license.

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$50 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his license suspended for one full year and shall not be eligible for another license until the expiration of one full year.
- C. Failure to observe any of the conditions set out herein is grounds for revocation of a license. Prior to such revocation, the Code Officer shall give 10 days' written notice to the licensee of his violation of or his failure to observe a general condition as set out above. If the licensee requests a hearing prior to the expiration of that ten-day notice period, the City Manager shall hold a hearing to determine if the license should be revoked. The licensee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to the City Council. If the licensee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a license granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.
- D. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.